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नई दिल्ली, शनिवार, जुलाई 14, 2001/आषाढ़ 23, 1923

No. 20]

NEW DELHI, SATURDAY, JULY 14, 2001/ASADHA 23, 1923

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके।

Separate Paging is given to this Part in order that it may be filed
as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएँ

Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 जून, 2001

आ. अ. 83.—निर्वाचन आयोग एतद्वारा 2000 की निर्वाचन
अर्जी संख्या 4 में तारीख 6-2-2001 के, मद्रास उच्च न्यायालय के निर्णय
को, लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106/
111 के अनुसरण में प्रकाशित करता है।

(निर्णय अंग्रेजी में छपा है।)

[सं. 82/त.ना.-लो. स./4/2000]

आदेश से,

के. आर. प्रसाद, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 13th June, 2001

O.N. 83.—In pursuance of section 106/111 of the Re-
presentation of the People Act, 1951 (43 of 1951), the Election
Commission hereby publishes the judgement of the High
Court of Madras dated 6-2-2001 in Election Petition No. 4 of
2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Tuesday, the 6th day of February Two thousand and one

CORAM

The Hon'ble Mr. Justice P. Sathasivam

Original Application No. 1190 of 2000

and

Election Petition No. 4 of 2000

Election Petition No. 4 of 2000

M. Asif

Petitioner

Vs.

1. N.T. Shanmugam
2. C.K. Thamizharasan
3. M. Kuppusamy
4. J. Sathiyamoorthy
5. C. Subbarayan

6. M. Thanikesan
7. V.N. Panneer
8. The Returning Officer/District Collector of Vellore, Vellore Parliamentary Constituency, Vellore.
9. The Chief Electoral Officer, Office of the Chief Electoral Officer, of Tamil Nadu, Secretariat, Chennai-9.

10. The Chief Election Commissioner Election Commission of India, Nirvachan Sadan, Asoka Road, New Delhi-110001.
- Rs. 10 has been struck from the array of respondents in the Election Petition as per the order dt. 6-12-2000.

Original Application No. 1190 of 2000

N. T. Shanmugam
No. 28, South Avenue Street,
Phase-1, Sathuvachaeri,
Vellore. 632 009.

Applicant/
First Respondent in the
Election
Petition No. 4
of 2000.
Respondent/
Petitioner in
Election
Petition No. 4
of 2000.

1. M. Asif

2. C.K. Thamizharasan
3. M.Kuppusamy
4. J. Sathiyamoorthy
5. C. Subbarayan
6. M. Thanikesan
7. V.N. Panneer
8. The Returning Officer and the Collector of Vellore, Vellore Parliamentary Constituency, Vellore.
9. The Chief Electoral Officer, Office of the Chief Electoral Officer of Tamil Nadu, Secretariat, Chennai-9.

Respondents/
Respondents

Election Petition praying that this Hon'ble Court may be pleased to :

- (a) declare the election of the 1st respondent as a member of Parliament from (No. 7) Vellore Constituency in the election held on 11-9-1999 as null and void and set aside the same.
- (b) declare the Petitioner has been duly elected from No. 7, Vellore Parliamentary Constituency in the election held on 11-9-1999.
- (c) direct the respondents to pay the costs.

Original Application filed under Rule 3 of the Rules of the Madras High Court, Election Petitions 1967 Order XIV Rule VIII of Original Side and under Section 86, 81(1), 81(3) and 83(1) of the Representation of People Act 1951, praying to dismiss the Election Petition No. 4 of 2000 on preliminary ground.

The above Original Application coming on for hearing before this Court on 22nd and 23rd day of January 2001 and upon hearing the arguments of Mr. R. Thiagarajan, Senior Counsel for M/s. D. Gubendra Gunabalan and M. Muthappan counsel for Applicant/First Respondent and of M/s. S. Thangasivan, counsel for the Respondent/Petitioner and upon reading the Judges Summons, affidavit of the respondent/Petitioner and perusing the Election petition and material documents filed herein and having stood over for consideration till this day the Court made the following Order :

This Original Application has been taken out by the first respondent in Election Petition No. 4 of 2000 under Rule 3 of the Rules of the Madras High Court—Election Petitions, 1967 and Order 14 Rule VIII of Original Side Rules and under Sections 86, 81(1), 81(3) and 83(1) of the Representation of People Act, 1951.

2. In this Original Application, the applicant/first respondent in the Election Petition has applied to this Court to dismiss the Election Petition No. 4 of 2000 on preliminary grounds by holding that no triable issue arises or survives.

3. The factual matrix in the Election Petition has to be summarised before taking up the present application for discussion. The first respondent in this application/petitioner in the Election Petition No. 4/2000 has filed the same under Sections 80, 100, 101 and 123 of the Representation of the People Act, 1951 seeking for a declaration that the election of the first respondent as a member of Parliament from (No. 7) Vellore Constituency in the election held on 11-9-1999 as null and void and set aside the same and also for declaration that the petitioner has been duly elected from No. 7 Vellore Parliamentary Constituency in the election held on 11-9-1999.

4. The petitioner in the election petition who is the first respondent in this application will be referred as the "election petitioner", while the applicant in this Original Application, who is the first respondent in the election petition will be referred as the "returned candidate".

5. According to the election petitioner, during the General Election for the 13th Lok Sabha, he contested from the Vellore Parliamentary constituency on the ticket of All India Anna Dravida Munnetra Kazhagam party. He submitted his nomination papers on 18-8-1999 with the Returning Officer and the District Collector of Vellore Parliamentary Constituency, Vellore (8th respondent in the Election Petition) and after scrutiny, his nomination was accepted by the 8th respondent and All India Anna Dravida Munnetra Kazhagam (in short "A.I.A.D.M.K.") party's symbol of "Two Leaves" was allotted to him. The returned candidate was in the fray as

a candidate of Pattali Makkal Katchi and he was allotted with the symbol of "mango". We are not concerned with the other candidates who contested the election.

6. Now I shall refer the main allegations made by the election petitioner in the Election Petition. Since the material averments have been raised from para 7 onwards, I shall refer the same in the serialim commencing from para 7. In para 7 it is stated that on seeing the overwhelming support by the general public to the election petitioner, from the first day of electioneering it self the returned candidate indulged in various irregularities by violating all norms, rules and regulations evolved by the Election Commission. The returned candidate and his agents virtually pumped in several crores of rupees and indulged in purchase of votes from various villages by paying illegal gratification to the voters and thereby wooing them to vote in his favour. They resorted to paying huge amounts of money and various gifts like brass vessels, sarees, dhothies etc., to various sections of people in many villages as illegal gratification and transported them to polling booths and induced as well as compelled them to cast their votes in his favour. The action of the returned candidate amounts to corrupt practice as per Section 123 of the Representation of People Act, 1951. The returned candidate grossly exceeded the expenditure limit allowed by the election commission by spending crores of rupees for wall posters, banners, cut outs, ornamental lights, wall paintings, arches, flags and election meetings with decorated dais, lighting and venues with thousands of high power lights, loud speakers etc. He used more than 100 vehicles every day for electioneering. On the date of election on 11-9-99 more than 2000 vehicles, hired by the returned candidate and his agents from various parts of the State of Tamil Nadu as well as the adjoining State of Andhra Pradesh, were illegally used for transporting the voters to the polling booths. After noticing all the malpractices and irregularities committed by the returned candidate, the officials of the 8th and 9th respondents and also the observers deputed by the Election Commission of India videographed the lavish nature of electioneering and the banners, cut-outs, other materials and vehicles used therefor, on numerous occasions.

7 In para 8, it is stated that on the date of polling viz., on 11-9-99 when the election petitioner was on rounds for inspecting the polling booth in Vellore constituency, he noticed the widespread rigging and bogus voting in Arcottargudisi polling booth by the returned candidate and his agents and a report was given to the police authorities. Only on the arrival of the Deputy Superintendent of Police of Vellore and after the intervention of the said officer, the irregularities and rigging committed by the elected candidate and his men was under control. Similar complaints of rigging and widespread irregularities were noticed in Bagayam polling booth. The Returned candidate and his men had brought thousands of men from outstations and casted bogus votes forcefully.

8. In para 9 it is stated that the returned candidate being the candidate supported by the ruling party in the centre as well as in the State, the entire Government machinery including Government cars and other vehicles were used by him for electioneering. Inspite of making complaints to the 8th respondent and police authorities on various occasions, no action was taken by the authorities in view of the fact that the returned candidate contested the election with the support of the ruling parties both in the State as well as in the Centre and he was also a sitting M.P. in the 12th Lok Sabha.

9. In para 10 it is stated that 8th and 9th respondents' officials videographed the public meeting arranged by the returned candidate and his agents which was attended by Mr. Karunanidhi, Chief Minister of Tamil Nadu in Vellore for canvassing votes for the returned candidate. For the said programme alone more than 20 lakhs rupees was spent by the returned candidate. Further, the Mayor of Chennai City Mr. M.K. Stalin was also brought to the neighbouring areas by the returned candidate and for arranging his public meetings several lakhs of rupees was spent by the returned candidate.

10. In para 11 it is alleged that the returned candidate is presently living with his family members in Vellore Town. However, his name does not find a place in the voters list of Vellore and he has furnished an address in a remote village called Melarasampatti to be his place of residence where his name reportedly appears in the voters list, in the nomination papers submitted by him with the 8th respondent. The returned candidate has exercised his franchise also in Melarasampatti village polling booth and it is clear that he has claimed some other person's name appearing in the voter's list to be of himself and falsely represented to the 8th respondent while filing his nomination papers and he has also exercised his franchise by utilising the same. This is in gross violation of the rules and regulations and he is liable to be disqualified and his nomination papers should have been rejected by the 8th respondent at the initial stage itself. His party colleague one Mr. Ponnuswamy who has contested from Chidambaram reserved constituency from the ticket of Pattali Makkal Katchi has also indulged in an almost similar malpractice and the Election Commission itself has issued notice to the said candidate for having cast his vote in Chidambaram polling booth illegally and the above fact would clearly go to show the said malpractice has been by and large attempted to by the returned candidate's political party members encouraged by the Central and State ruling parties.

11. In para 12, it is stated that serious malpractice of tampering with the ballot boxes has been committed by the returned candidate and his agents in the Anikat, Katpadi, Arni and Vellore Assembly segments of Vellore Parliamentary constituency.

12. In para 13, it is alleged that the entire ballot boxes pertaining to Vellore Parliamentary constituency were brought to the Thanthai Periyar Polytechnic building in Vellore Town and while transporting the ballot boxes from various places,

the 8th respondent should have permitted one of the agents of the election petitioner as well as other candidates to accompany the boxes upto the storage point. However, the 8th respondent officials did not permit the election petitioner's agents to accompany the ballot boxes and hence the election petitioner was denied of the opportunity to ensure that there is no malpractice en route. The 8th respondent's officials had allowed only the returned candidate to affix his seal in violation of rules and regulations. Even while opening the safety rooms also, the 8th respondent did not permit the election petitioner's agent to be present and in fact the 8th respondent should have obtained the signatures of the agents of the election petitioner after satisfying them that all the locks were intact.

13. In para 14, it is stated that 8th respondent's officials have stored the ballot boxes in various rooms spread over across the spacious campus of Thanthai Periyar Polytechnic and on 3-10-1999 at about 6.30 P.M., when the election petitioner's agent Mr. G. Hussain was sitting in one of the halls in the Thanthai Periyar campus he had sensed some hasty movement of the returned candidate and his men inside the premises near the room where the ballot boxes pertaining to Anicut Assembly segment was stored and immediately the said agent G. Hussain had rushed to the said room where Anicut Assembly segment votes were stored and to his great shock and surprise he had found a group of returned candidate's men and his agents speeding away from near the room and alighting a car parked near the gate. On realising that the returned candidate and his men had indulged in a grave malpractice of changing the ballot boxes by illegally opening the locked door by unscrewing the screws available in the padlock of the so called safety room with the help of the 8th respondent's subordinates and the couple of police personnel posted there, his agent informed the election petitioner with regard to the said incident.

14. In para 15, it is stated that the election petitioner rushed to the said premises at about 6.50 P.M. with his chief agent Mr. Era. Sa. Maran and press persons including the press photographer called Mr. Gnanamani of Malai Murasu daily and few others inspected the said room. During the inspection, the election petitioner was shocked to notice that the padlock on the door of the safety room in which the ballot boxes pertaining to Anicut Assembly segment was kept has been removed and refixed. After noticing the useless safety system, the election petitioner realised that the 8th respondent and his subordinates had acted under pressure from the returned candidate and the ruling parties in the State as well as the Centre and allowed the returned candidate to indulge in the grave malpractice of changing the ballot boxes and bags.

15. In para 16, it is stated that after noticing the illegal activity of the returned candidate and his men and the useless safety system provided by the 8th respondent, the election petitioner made the padlock photographed by Mr. Gnanamani, the press photographer of Malai Murasu, Vellore, who

accompanied the election petitioner and a complaint was also lodged by him to the subordinate of the 8th respondent and police personnel who accompanied the election petitioner during his inspection. The 8th respondent failed to take any action regarding the said incident in view of the political pressure.

16. In para 17, it is alleged that under the influence of the returned candidate, the Malai Murasu photographer Mr. Gnanamani refused to give copies of the close-up photographs. In sub-paragraph (a) of paragraph 17, it is stated that the total number of electors available in the Vellore constituency is 11,52,421. The total number of votes polled on the date of polling, namely, 11th September, 1999 is 7,00,114 according to the official statement issued by the respondents 8 to 10 on the next day of the polling, after checking up and verifying the details furnished by all the polling officers. The said polled votes works out to about 60.92% votes in the Vellore constituency. However, the total number of votes found available after the counting is 7,02,639 and thus there was a difference of 2,525 votes, which is only due to the malpractice committed by the returned candidate and his agents. In sub-paragraph (b) it is stated that the said incident would clearly show that there was widespread tampering of ballot boxes by the returned candidate and his agents during the long gap of 25 days unnecessarily provided by 9th respondent for counting votes after the date of polling. In sub-paragraph (c) it is stated that with the view of getting the full boothwise particulars of the votes polled and votes found at the time of counting, and also to voters list for the entire constituency from the 8th respondent, the election petitioner submitted applications to the 8th respondent on 9-1-99 and on 27-10-99 through his chief election agent and the 8th respondent has refused to give such particulars. The 8th respondent and his subordinates are not at all responding to the election petitioner's other requests for the details about the voter's list pertaining to the entry of the returned candidate's name also till the date of filing of the election petition.

17. In para 18, it is stated that 8th and 9th respondents and their subordinates have tried their level best to tally the votes polled and the votes found at the time of counting and they have miserably failed in their efforts to manipulate the accounts and now they are again attempting to tamper with the same.

18. In para 19, it is stated that a perusal of the photograph which was taken on 3-10-99 by closely focussing the padlock would clearly show that there was no safety centre bolt and there were only outer screws available in the padlock which have been easily removed by the returned candidate and his agents.

19. In paragraph 21, it is stated that the illegal activity of the returned candidate and his agents in replacing the genuine ballot boxes with bogus boxes with full of bogus votes made in favour of the returned candidate is evident from the above facts.

20. In paragraph 23, it is stated that in view of the fact that it was declared by various media persons and observers that the victory of the election petitioner in Vellore constituency was a foregone conclusion he did not register any written complaint before the 8th and 9th respondents.

21. In paragraph 24, it is stated that during the counting of votes on 6-10-99 thousands of votes which were polled in favour of the election petitioner were declared to be invalid by the 8th respondent and his subordinates, wantonly under the complete influence of the returned candidate and his party men. It is evident from the fact that an exorbitant number viz. 13,264 votes have been declared as invalid votes and if a recounting is conducted it would clearly show that the respondents 8 and 9 have exercised power colourably and supported the returned candidate.

22. In para 25, it is stated that the returned candidate and his agents have indulged in large scale corrupt practice in the interest of the returned candidate by changing the ballot boxes and bags by opening the room in which the ballot boxes of Anicut constituency were kept and replaced the genuine ballot bags and boxes with bogus ones with the help of 8th respondent and his subordinate officials and thereby caused grave injustice to the election petitioner. Similar mischiefs have been played in respect of the ballot boxes and bags pertaining to other three Assembly segments viz., Arni, Katpadi and Vellore. Had the returned candidate not resorted to such corrupto and malpractices, the outcome of the election of Vellore Parliamentary constituency for the 13th Lok Sabha would have been in favour of the election petitioner and hence the present election has to be held as void under Section 100, Sub-section 1(d) (ii) (iii) etc. The corrupt and malpractices of the returned candidate and his men has materially affected the prospects of the election petitioner in the said election and the same has rendered the entire election process null and void.

23. In paragraph 26, it is stated that the 8th respondent and his officials has not reckoned all the votes polled in favour of the election petitioner and rejected thousands of votes polled in favour of him (election petitioner) as invalid. Further, the 8th respondent's subordinates have reckoned thousand of actual invalid votes in favour of the returned candidate. If all the votes polled in favour of the election petitioner had been accounted properly, he would have won with a huge margin of votes from the said constituency and the declaration of the returned candidate is illegal and void. During the counting also, the 8th respondent as well as his subordinates were grossly violating all norms of settled procedure in support of the returned candidate and after completion of counting also, they neglected obtaining the signature of neither the election petitioner nor his chief election agent before declaring results, and such a declaration is unlawful.

24. Now I shall refer the averments made in the affidavit in Original Application No. 1190 of 2000 filed by the returned candidate/first respondent in the Election Petition. The averments made in the said petition are briefly stated

here under :—The election petitioner has not complied with the mandatory requirements of Sections 81(1), 81(3), and 83 (1) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). The allegations contained therein are vague, indefinite, incorrect, misleading, bogus and concocted without disclosing any cause of action for the election petition. The grounds alleged in the election petition do not constitute grounds as contemplated under Section 100 of the Act. The election petitioner lost by a margin of large number of votes. The election petition suffers from lack of concise statement of material facts. It has not been pleaded how the result of election in so far as it concerns the returned candidate has been materially affected. No contemporaneous incidents have been cited in the petition disputing the correctness of the process of the election in the dispute. This amounts to non-disclosure of cause of action rendering the petition liable to be rejected. The election petition deserves to be rejected under Sections 86 and 87 of the Act read with Order 7 Rule 11 and Section 151 of the Code of Civil Procedure. The election petitioner has no where pleaded any violation or contravention of any of the provisions of the Act or the rules made thereunder, of the commissioning of any corrupt practice either by the returned candidate or by any one with the consent affecting the result of the election so far it concerns the returned candidate. The several allegations in the election petition have been made without any basis whatsoever and without even disclosing the source from which the election petitioner has made the allegations. The election petition suffers from want of non-compliance with mandatory provisions under the Representation of the People Act, 1951 such as Sections 83, 83(2), 83(3), 83(1)(c) and Rule 94A of the Rules framed thereunder. Throughout the election petition, no cause of action has been disclosed nor any material facts and particulars constituting the ground for interference has been alleged and hence the election petition is liable for dismissal on this ground alone. Section 83(1)(c) of the Act provides that an election petition must be signed by the petitioner and it is also required to be verified in the manner indicated in the Code of Civil Procedure for verification of pleadings. The election petition has not been verified by the election petitioner in accordance with the above said provision and hence it is liable to be rejected. This verification does not specify as to which of the said paragraphs or which part of the said paragraphs are verified by the petitioner from his knowledge and which of the said paragraphs or part of the paragraph are verified from information received. The election petitioner has also not specified or verified as to the source from which information was received. The verification made by the election petitioner in the election petition is no verification at all in the eye of law and hence the election petition is liable to be dismissed for want of proper verification. In the copy of the said election petition served on the returned candidate, it is seen that the annexures to the present petition have not been signed and verified in the manner laid down in Section 83(1) read with Section 83(2) of the Act. The annexures or the schedule are

therefore liable to be struck off for want of proper verification thereof. In the copy of the election petition served on the returned candidate, it is seen that the annexure to the present petition have not been signed and verified in the manner laid down in Section 83(2) of the Act. Section 83 of the Act provides that the election petitioner shall verify an affidavit in the prescribed form in support of the allegations regarding corrupt practices made in the petition. Rule 94A of the conduct of Election Rules, 1961 requires that the affidavit must be in Form 25. Form 25 makes it clear that the election petitioner must specify the nature of the corrupt practices and the details of the corrupt practice as alleged. These provisions have not been complied with by the election petitioner as alleged; hence the election petition is liable to be dismissed for non-compliance with such requirements. The copy of the affidavit which has been served on the returned candidate and which is said to be in support of the alleged corrupt practice is not an affidavit at all in the eye of law. Hence for want of necessary supporting affidavit being filed by the election petitioner, the allegations of corrupt practices are liable to be struck off.

25. It is further stated that the election petition is liable for dismissal inasmuch as the solemn affirmation and verification in the affidavit filed by the election petitioner in support of the petition is at variance with the solemn affirmation and verification in the main election petition. Even while verifying the main election petition, though the election petitioner alleges that the contents of paragraphs 1 to 26 have been verified to be true and correct to his knowledge, he has not disclosed the source of information. As per Section 81(3) of the Act, it is obligatory for the election petitioner to file the election petition along with as many copies thereof as there are respondents mentioned in the petition and to attest each and every such copy under his own signature to be true copy of the petition. Section 81(3) is mandatory. In the present case the election petitioner has clearly failed to comply with Section 81(3) of the Act. The copy of the election petition that was served on the returned candidate is neither a true copy of the original election petition filed into the Court nor the same has been duly attested by the election petitioner. There is, therefore, non-compliance of the requirement of Section 81(3) of the Act warranting the dismissal of the petition. The petition is also liable to be dismissed since the affidavit served on the returned candidate along with the copy of the main election petition are not true copies of the original. The time, place, date, name and particulars and name of the oath commissioner, before whom they were sworn, the record of its having been sworn have not been given in the copies of the affidavit supplied to the returned candidate. There is thus a total non-compliance with the various provisions of the Act and Rules framed thereunder and consequently the election petition merits dismissal.

26. The election petition lacks in the concise statement of material facts and particulars and hence it is liable to be dismissed on the ground that it does not disclose any cause of

action. Section 83 of the Act is mandatory which requires a concise statement of material facts and full particulars of the alleged corrupt practice so as to present a full picture of the cause of action. In the case of allegations or corrupt practices a full statement of the names of the parties alleged to have committed such practices, the date and place of commissioning the alleged practice must be specifically pleaded. A mere reading of the allegations in the election petition would show that the various allegations are baseless concocted and bogus and aimed with a view to harass the returned candidate.

27. It is further stated that Section 83 of the Act contemplates a clear distinction between "material facts" and "material particulars". Failure to plead even a single material fact leads to an incomplete cause of action and the incomplete allegations are therefore liable to be struck off under Order 6 and Rule 16 of the Code of Civil Procedure. It is settled position that where the Court finds that neither material facts have been stated nor full particulars of the corrupt practice alleged to have been furnished in the election petition, then the election petition can be dismissed under the provisions of the Code of Civil Procedure which is applicable in the present case read with Section 83(1) on the sole ground that it does not disclose a cause of action. Respondents 8 and 9 have unnecessarily been impleaded as parties in the case. The petition is bad for misjoinder of parties. The allegations regarding irregularities are vague, general and without material facts. No particulars as to the time, date and place and also the persons who did the rigging and bogus voting are totally missing in the election petition. Regarding the videograph taken by the officials of 8th and 9th respondent in the public meetings arranged by the returned candidate and his agents in which the Chief Minister of Tamil Nadu attended at Vellore, the election petitioner has not furnished particulars such as name of the place, time and other material facts. Regarding allegation of malpractice of tampering with the ballot boxes alleged to have been committed by the returned candidate and his agent are again vague and indefinite without any material facts and particulars as required in law. There is no allegation as to any actual removal of either the screws or the padlock nor is there any allegation as to whether anybody saw the same being removed by anybody. No contemporaneous act in support of the above allegations have been disclosed. The further allegation that the 8th respondent and his officials had not reckoned all the votes polled in favour of the election petitioner and rejected thousands of votes polled in favour of the election petitioner as vague and general without material facts and particulars. Before declaring the results, the procedure has been clearly followed and observed. In order to declare the election of the returned candidate to be void, Section 100(1)(d)(IV) it is necessary for the election petitioner to plead that the result of the election in so far as it concerns the returned candidate has been materially affected by the alleged non-compliance with the provisions of the Acts or the Rules. There is no averment in the election petition containing necessary material facts

and particulars and the returned candidate had spent for the election any amount in excess of the prescribed limit and with the result the election has been materially affected by the failure to give a true and correct account of the expenditure. In the absence of any such averment, it is not open to the election petitioner to adduce any evidence to that effect. If these facts are not pleaded with necessary material facts and particulars, the election petition is liable to dismissal as held by various decisions of the Hon'ble Supreme Court.

28. The election petitioner has filed a counter affidavit in O.A. No. 1190 of 2000 reiterating what he has stated in the election petition. It is stated that the election petitioner has set out all material facts and full particulars in the petition. Further particulars can also be added by amending the petition under Section 86(5) of the Act. The election petitioner has complied with Sections 81, 82, 93 and 117 of the Act. In any event, there has been substantial compliance of the mandatory provisions of the Act. The alleged defects pointed out curable defects and as such the application seeking dismissal of the Election Petition on preliminary grounds is not maintainable and it is nothing but an abuse of process of law. The documents filed with the Election petition and the affidavit filed in Form No. 25 are all attested and are in compliance with the relevant provisions of the Act and Rules. The election petitioner has furnished required number of copies of the election petition as contemplated in Section 81(3) of the Act and he has attested each and every copy with his own signature as true copy, in compliance with Section 81(3) of the Act. The same was verified by the office. It is stated that section 86(1) of the Act does not refer to section 83 of the Act. He has furnished the required number of true copies of the Election petition, documents filed along with the election petition and affidavit in Form No. 25 duly attested by him as true copy under his signature and submitted the same to the office for being served on the respondents in the election petition and thus complied with the statutory requirements. The main election petition has been filed on specific grounds of corrupt practice and the same cannot be termed as not in accordance with Sections 81(1), 81(3), 83(1) of the Act. The Hon'ble Supreme Court has on various occasions reiterated that the election petitions should not be dismissed even when the affidavit is not drawn up as per Form 25 of the Conduct of Election Rules. He has complied with all the relevant provisions of the Act and Conduct of Election Rules, 1961. Moreover, he has also filed an additional affidavit in strict compliance of the Conduct of Election Rules, 1961 and the question of dismissing his election petition does not arise at all. The returned candidate is only attempting to delay the trial process by filing the original application which is totally untenable and not *bona fide*. Further, as per law, a concise statement of fact alone is required to prove his pleadings in the trial of the election petition as contemplated in the Act by producing material evidences and hence the above application is liable to be rejected.

29. Before discussing the matter further, it will be useful to bear in mind the relevant provisions of the Representation of the People Act, 1951 (in short "the Act")

and the Conduct of Elections Rules, 1961 (in short "the Rules"). Part VI of the Act deals with disputes regarding elections. The following sections in Part VI are relevant :—

"Section 80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

Section 81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates."

Section 83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleged including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

Section 86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.—An order of the High Court dismissing an election petition under this Sub-section shall be deemed to be an order made under clause (a) of Section 98.

(2) xx xx

(3) xx xx

Section 87. Procedure before the High Court.—

(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial

of suits :

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (I of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

Section 100. Grounds for declaring election to be void.—(1) Subject to the provisions of Sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
- (b) x x x
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.”

Apart from the above provisions, Section 123 in Part VII extensively deals with corrupt practices and electoral offences. In addition to the above provisions, Rule 94-A of the Rules and Form 25 are relevant.

30. In addition to the above provisions, it is also relevant to refer Order VII, Rule 11 C.P.C. As per clause (a) of Rule 11 of the said Order (Order VII), where the election petition does not disclose a cause of action, the same is liable to be rejected. It is clear from the above provisions that the person who desires to question the election, undoubtedly, has to present an election petition in accordance with the provisions of Chapter VI of the Act. The petition shall contain one or more grounds specified in Sub-section (1) of Section 100 and Section 101 of the Act and the same has to be filed within 45 days from not earlier than the date of the election of the returned candidate. In the election petition the petitioner has to state concise statement of material fact on which the petitioner relies and also set-forth full particulars of any corrupt practice including full statement such as the names of the parties alleged to have committed such practice, the date and place of commission of each such practice. The petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. If the petitioner alleges any corrupt practice, then an affidavit in terms of Form 25 shall also be accompanied. Necessary allegation of such corrupt practice and other particulars to be mentioned in the affidavit. It is further clear that schedule as well as annexure to the petition shall also be signed by the petitioner to be verified in the same manner as the petition. At the time of presenting an election petition, the petitioner has to deposit a sum of Rs. 2000 as security for the costs of the petition as per Section 117 of the Act. As per Section 86 of the Act, if an election petition which does not comply with the said provisions is liable to be dismissed.

31. Mr R. Thaigarajan, learned senior counsel appearing for the applicant and returned candidate, after taking me through all the averments in the election petition as well as the above referred relevant provisions of the Act and Rules, would contend that the election petitioner has not complied

with the mandatory requirements of Sections 81 (1), 81 (3) and 83 (1) of the Act. He further contended that the grounds alleged in the election petition do not constitute grounds as contemplated under Section 100 of the Act. According to him, it has not been pleaded how the result of the election in so far as it concerns the returned candidate has been materially affected. For want of such pleadings, the election petition is liable to be rejected as per the catena of decisions of the Supreme Court as well as various High Courts. He further contended that no contemporaneous incident has been cited in the petition disputing the correctness of the process of the election. He also contended that the election petition deserves to be rejected under Sections 86 and 87 of the Act read with Order VII Rule 11 and Section 151 of the Code of Civil Procedure. He demonstrated that the election petitioner has nowhere pleaded any violation or contravention of any of the provisions of the Act or the Rules, of the commissioning of any corrupt practice either by the returned candidate or by any one with his consent affecting the result of the election of the returned candidate. According to him, no cause of action has been disclosed, nor any material facts and particulars constituting the ground for interference has been alleged; hence the election petition is liable to be dismissed. For want of necessary supporting affidavit being filed by the petitioner, the allegation of corrupt practice is liable to be struck off. The election petitioner has not disclosed the source of information. In the absence of full statement of the names of the parties alleged to have committed corrupt practices, the date and place of commissioning the alleged practice in the election petition, the same is liable to be dismissed as it does not disclose any cause of action.

32. On the other hand, Mr. S. Thangasivan, learned counsel appearing for the first respondent in the application and election petitioner, would contend that the petitioner has set out material facts and full particulars in the petition and further particulars can also be added by amendment of the petition under Section 86 (5) of the Act. It is further stated that petitioner has complied with Sections 81, 82, 93 and 117 of the Act and in any event, there has been substantial compliance of the mandatory provisions of the Act. The petitioner has also complied with Rule 94(A) of the Rules and also Form 25 of the Rules. He also contended that the alleged defects pointed out are curable defects and as such the application seeking dismissal of the election petition on preliminary grounds is not maintainable. The verification in the election petition, service of copies on the returned candidate and affidavits filed by the election petitioner are in order. The election petitioner has satisfied what is provided under Order VI Rule 1 of the Code of Civil Procedure and Section 83 of the Act by furnishing required materials in a concise form of material facts and not the evidence by which they are to be proved. There is no merit in the present application and the same is liable to be rejected.

33. I have already referred to the particulars of various averments made in the election petition, the necessary

averments in the present application praying for dismissal of the election petition as it does not satisfy the mandatory provisions of the Act. Before considering the rival contentions, it is useful to refer various decisions of the Hon'ble Supreme Court and other High Courts.

34. How the election petition has to be considered has been dealt with by the Hon'ble Supreme Court in *N. P. Ponnuswami v. Returning Officer, Namakkal* [(A. I. R. (39) 1952 Supreme Court 64)]. In para 18, Their Lordships have held as follows :—

“18. The points which emerge from this decision may be stated as follows : (1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. (2) Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

35. In *Mohinder Singh Gill v. Chief Election Commissioner* (AIR 1978 Supreme Court 851), the following observations of Their Lordships are relevant : (para 15)

“15. Two prefatory points need to be mentioned as some reference was made to them at the bar. Firstly, an election dispute is not like an ordinary lis between private parties. The entire electorate is vicariously, not inertly, before the court. [See 1959 SCR 611 at pp. 616, 622 : (AIR 1958 SC 698 at pp. 701, 703)]. We may, perhaps, call this species of cases collective litigation where judicial activism assures justice to the constituency, guardians the purity of the system and decides the rights of the candidates. In this class of cases, where the common law tradition is partly departed from, the danger that the active judge may become to some extent, the prisoner of his own prejudices exists; and so, notwithstanding his powers of initiative, the parties' role in the formulation of the issues and in the presentation of evidence and argument should be substantially maintained and care has to be taken that the circle does not become a vicious one, as pointed out by J. A. Jolowicz in 'Public Interest Parties and the Active Role of the Judge in Civil Litigation' (ss. p. 276). Therefore, it is essential that courts, adjudicating upon election controversies, must play a warily active role, conscious all the time that every decision rendered by the Judge transcends private rights and defends the constituency and the democracy of the country.”

36. In *Jyoti Basu v. Debi Bhosal* (AIR 1982 Supreme Court 983), the following observation is relevant : (para 8)

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a

fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it

It is clear from these three decisions that the Representation of the People Act, 1951 is a complete and self contained code within which must be found any right claimed in relation to an election or election dispute. I have already referred to the scheme of the Act. We must seek answers to the questions within four corners of the statute.

37. In *Ch. Subha Rao v. Member, Election Tribunal* (AIR 1964 Supreme Court 1027), a Constitutional Bench of the Supreme Court has held that an election petition is not to be equated to an election at law or in equity, but as the rights are purely the creature of statute, if the statute renders any particular requirement mandatory, the courts possess and can exercise no dispensing power to waive non-compliance. With reference to requirement of Sub-sections (1) and (2) and (3) of Section 81 of the Act, Their Lordships have observed thus . (para 14)

"..... When Section 81 (3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commission, and therefore a condition precedent for the proper presentation of an election petition. If that is a requirement of Section 81, no distinction can be drawn between the requirements of sub-sections (1) and (2) and of sub-section (3). We might add that if there is a total and complete non-compliance with the provisions of Section 81(3), the election petition might not be "an election petition presented in accordance with the provisions of this part" within Section 80 of the Act. We are therefore inclined to consider that if there had been such a non-compliance with the requirement of sub-section (3) nor merely the Election Commission under Section 85 but the Election Tribunal under Section 90 (3) would *prima facie* not merely be justified but would be required to dismiss the election petition."

It is clear from the said decision that compliance of sub-section (3) of Section 81 is a mandatory and the election petition which does not contain the mandatory provisions of sub-section (3) of Section 81 is liable to be dismissed.

38 In *Manubhai v. Popatlal* (AIR 1969 Supreme Court 734) the Supreme Court has held that Section 83 (1)

(b) of the Act is mandatory. After referring Section 83 (1) (b) in para 5, Their Lordships have held as follows :—

"5. The section is mandatory. Where a corrupt practice is charged against the returned candidate the election petition must set forth full particulars of the corrupt practice so as to give the charge a definite character and to enable the Court to understand what the charge is. The charge must be substantially provided as laid and evidence cannot be allowed to be given in respect of a charge not disclosed in the particulars."

After referring Section 86 (5), the Supreme Court in the same paragraph held thus :—

"..... It provides that "the High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition". In *Harish Chandra Bajpai v. Triloki Singh*, 1957 SCR 370 = (AIR 1957 SC 444) the Court held that though under the English Law the petitioner was not obliged to give the particulars of the corrupt practice in his petition the difference was a matter of form and not of substance and that under Section 83 (3) as it stood before 1955 the Court could allow an amendment introducing fresh instances of the corrupt practice alleged in the petition. Referring to the English practice the Court observed at page 382 "it is sufficient if the particulars are ordered to be furnished within a reasonable time before the commencement of the trial". Section 83 (3) has been repealed and is now replaced by Section 86 (5) which forbids any amendment introducing particulars of a corrupt practice not previously alleged in the petition. Assuming that the amendment of March 7, 1967, was permissible under Section 86(5), the question is whether the High Court rightly allowed it. Normally an application for amendment under Section 86 (5) should be made within a reasonable time before the commencement of the trial. The Court has power to allow an amendment even after the commencement of the trial, but as a rule leave to amend at a late stage should be given in exceptional cases where the petitioner could not with reasonable diligence have discovered the new facts earlier. Leave to amend will not be given if the petitioner is not acting in good faith or has kept back the facts known to him before the trial started."

It is clear that amendment petition containing particulars of corrupt practice not previously alleged in the petition is prohibited.

39. In *S. N. Balakrishna v. Fernandez* (AIR 1969 Supreme Court 1201), the following conclusion of Their Lordships is relevant : (paras 29, 35, 37 and 47)

"29. Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the People Act. Here we have to consider Sections 81, 83 and 86 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars ? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites

the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. The argument that the latter part of the fifth sub-section is directory only cannot stand in view of the contrast of the language of the two parts. The first part is enabling and the second part creates a positive bar. Therefore, if a corrupt practice is not alleged, the particulars cannot be supplied. There is however difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or *vice versa*. In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. ...

35. It would appear from this that to make out a complete charge the facts necessary must be included in relation to a 'ground' as stated in the Act. Merely repeating the words of the statute is not sufficient. The petitioner must specify the ground i.e., to say the nature of the corrupt practice and the facts necessary to make out a charge. Although it has been said that the charge of corrupt practice is in the nature of quasi criminal charge, the trial of an election petition follows the procedure for the trial of a civil suit. The charge which is included in the petition must, therefore, specify the material facts of which the truth must be established

37. From our examination of all the cases that were cited before us we are satisfied that an election

petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the section requires that material facts of corrupt practices must be stated. If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later, but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition

47. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent

40. In *Hardwari Lal v. Kanwal Singh* (AIR 1972 Supreme Court 515), it was held that : (paras 19, 20 and 22) :

"19. The requirements in an election petition as to material facts and the consequences of lack of such allegation of material facts came up for consideration in this Court in the recent decision in *Samant N. Balakrishnan v. George Fernandez* (1969) 3 SCR 603 = (AIR 1969 SC 1201). In that case reference was made to Sections 81, 83 and 86 of the Act as the procedure provisions of election petition. Section 81 deals with presentation of petitions. Section 83 deals with contents of petitions. Section 86 deals with trial of petitions. Hidayatullah, C. J. speaking for the Court laid down these propositions. First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth, in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the

obtaining or procuring of assistance unless the exact type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts.

20. It is therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance.

"22.....The gravamen of the charge of corrupt practice within the meaning of Section 123 (7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action."

41. In *Udhav Singh v. Madhav Rao Scindia* (AIR 1976 Supreme Court 744), Their Lordships have held as follows : (paras 20, 37, 38, 39 and 40)

"20. The respondent cannot by consent, express or tacit, waive these provisions or condone a non-compliance with the imperative of Section 82 (b). Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of the statutory obligation cast on it by Section 86. As soon as the non-compliance with Section 82 (b) comes or is brought to the notice of the court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition in unstinted obedience to the command of Section 86.

37. Like the Code of Civil procedure, this section also envisages a distinction between "*material facts*" and "*material particulars*". Cl. (a) of sub-section (1) corresponds to Order 6, Rule 2, while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "*material facts*" and "*material particulars*" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single *material fact* leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of *material facts*, the petition is liable to be summarily rejected for want

of a cause of action. In the case of a petition suffering from a deficiency of *material particulars*, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded; and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83 (1) (a).

39. "particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of Clause (b) of Section 83 (1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of Clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

40. The distinction between "material facts" and "material particulars" was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A.N. Ray J. (as he then was) said on this point in *Hardwari Lal's case* (AIR 1964 SC 1366) (supra).

"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The sub-

mission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner? The answer is in the negative because the allegations in the petition did not disclose any cause of action."

42. In *N.C. Zeliang v. Aju Newmai* (AIR 1981 Supreme Court 8). Their Lordships have held that, (para 16)

"16 It is well settled that an allegation of corrupt practice must be clearly pleaded in the petition and the particulars given in the schedule, corrupt practice being in the nature of a fraud, it is not permissible to plead one kind of fraud or one kind of corrupt practice and prove another though they may be interconnected"

43. In the case of *Azhar Hussain v. Rajiv Gandhi*, reported in AIR 1986 Supreme Court 1253 (1st Rajiv Gandhi's case), the Supreme Court has held that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil Procedure Code and it is settled law that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In para 9, Their Lordships have held that the fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the C.P.C. cannot be exercised. In para 11, Their Lordships have held as follows :—

".....So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with"

In Para 14, after analysing numerous decisions in regard to the question as to what exactly is the content of the expression 'material facts and particulars', which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act, Their Lordships have summarised thus :—

"Para 14. (1) What are material facts and particulars ?

Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. (1969) 3 SCR 217 :

(AIR 1969 SC 734) — *Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi*.

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded : (1972) 2 SCR 742 : (AIR 1972 SC 515)—*Hardwari Lal v. Kanwal Singh*.

- (a) mode of assistance ;
- (b) measure of assistance; and
- (c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :

- (a) kind or form of assistance obtained or procured;
- (b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election. (AIR 1972 SC 515)

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured (AIR 1972 SC 515).

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. (AIR 1972 SC 515) (supra).

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars. (AIR 1972 SC 515) (supra).

44. In the case of *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*, reported in AIR 1986 Supreme Court 1534 (2nd Rajiv Gandhi's case), it was stated in para 4 that :

"4. It is now well-settled that in election petitions pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it is liable to be rejected in limine"

45. In the case of *Dhartipakar v. Rajiv Gandhi*, reported in AIR 1987 Supreme Court 1577 (third Rajiv Gandhi's case). Their Lordships have held thus : (para 8)

"8 Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI, Rule 16 and Order VII, Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under Order VI, Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleadings which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI, Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VI, Rule 11."

Their Lordships have further held in para 11 as follows :—

"11.....If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11. A pleading if vague and general is embarrassing. If the allegation contained in the election petition even assuming to be true and correct do not make out any case of corrupt practice or any ground under Section 100 of the Act, the pleading would be unnecessary, frivolous and vexatious. It is

always open to strike out the same. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under Order VII, Rule 11, Civil Procedure Code. If a preliminary objection is raised before the commencement of the trial, the court is duty bound to consider the same it need not postpone the consideration for subsequent stage of the trial.

In para 14, Their Lordships have held thus :—

"14 Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner."

Their Lordships have further held in para 20 as follows :—

"20 In order to constitute a corrupt practice as contemplated by Sections 77 and 123 (6) it is necessary to plead requisite facts showing authorisation, or undertaking of reimbursement by the candidate or his election agent. A mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice.

21 It is thus evident that unless the allegations are specific that the candidate or his election agent authorised the expenses before the money was actually spent and that the candidate or his election agent reimbursed or undertook to reimburse the same the necessary ingredient of corrupt practice would not be complete and it would provide no cause of action to plead corrupt practice"

46. In *Manohar Joshi v. Damodar Tatyaba*, reported in (1991) 2 Supreme Court Cases 342, Their Lordships, after referring to Sections 82 and 83 of the Representation of the People Act, 1951, has held as follows : (para 9)

"9. It is clear from the reading of these two sections that even in the election petition where

allegations of corrupt practices are made, full particulars of the alleged corrupt practices including as full a statement as possible and the names of the parties who are alleged to have committed such practice and the date and place of the commission of each such practice have to be furnished. What is further, the allegations of the corrupt practice have to be accompanied by an affidavit in support both of the allegations as well as the particulars thereof, and if there are any schedules or annexures to the petition in support of the corrupt practice, they have also to be signed by the petitioner and verified by him in the same manner as the petition. This is a mandatory requirement. The object of the said provisions is obvious. The party, and it includes not only the returned candidate but all other candidates against whom the corrupt practice is alleged, must have an adequate notice of the precise allegations made against him so that he has a proper opportunity to meet them."

After referring to notice issued by Court under Section 99 of the Act, the Supreme Court has held when a notice is issued under Section 99 against a person who is not a party to the election petition for holding him guilty of any corrupt practice, the notice should not apprise him of the precise charge against him and give him the full particulars thereof. The Supreme Court has also held that it is a precondition for the trial of the charges of the corrupt practices that the person called upon to face the charge should be apprised, in advance, of the precise charge or charges against him and also the precise evidence—oral or documentary, which is sought to be relied upon in support of the said charge or each of the said charges.

47. In *K.C. Madhava Kurup v. Muraleedharan*, reported in AIR 1991 Kerala 20, K.G. Balakrishnan, J. (as His Lordship then was) has reiterated by quoting the various decisions of the Supreme Court that an election petition, where allegations of corrupt practices are imputed must be regarded as a proceeding of quasi-criminal nature wherein strict proof is necessary and the pleadings of the election petitioner in his petition should be absolutely precise and clear, containing all necessary details and particulars as required by law. His Lordship has further held that the allegations in the election petition should not be vague, general in character or lack material particulars. His Lordship has also held that from Section 83 of the Act it is clear that all preliminary facts which must be proved to establish the existence of a cause of action shall be stated in the petition. His Lordship has further held that in the context of a charge of corrupt practice material facts would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. His Lordship has also held that : (para 2)

"2. The Supreme Court has consistently taken the view that an election petition can be and must be dismissed under the provisions of Civil Procedure Code if the

mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice are not complied with. By virtue of Section 87 of the Act the provisions of the C.P.C. are made applicable for the trial of an election petition. ... Therefore, it is clear that an election petition is to be summarily rejected where it fails to furnish a cause of action."

With regard to use of more motor vehicles, His Lordship has held that, (para 4)

"4. The allegations contained in paragraph 3(a) (ii) of the election petition do not specifically say that motor vehicles were procured and used for the free conveyance of electors. It is also important to note that not a single specific instance has been quoted by the petitioner. A taxi cab number is mentioned in the petition but it is not specified as to who were all the electors given conveyance to or from polling station. The allegations are too vague and general and that the respondent may not be in a position to defend the same effectively. The allegations are not capable of raising a cause of action...."

7. The non-production of a proper affidavit is violation of Section 83 of the Act...."

48. In *Narain Chand Prasher v. Prem Kumar Dhumal*, reported in AIR 1993 Himachal Pradesh 84, a Single Judge of the Himachal Pradesh High Court while dealing with the similar preliminary objection, has considered almost all the decisions of the Supreme Court from 1954 to 1993. As regards Section 81(3) of the Act, he observed in the following manner : (para 39 and 40)

"39 The mandatory requirement of sub-section (3) of Section 81 of the Act is in two parts. The first part provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and the second part deals with the manner in which such copies shall be attested by the petitioner under his own signature to be true copy. Since these are mandatory provisions the same must be fulfilled exactly as provided in law but in so far as directory provisions are concerned it is sufficient if they are substantially complied with...."

"40. The question that when a document referred to and attached to the election petition would become an integral part or be merely a piece of evidence and a proof of the allegations contained therein, came up for consideration in *M. Karunanidhi v. H.V. Handa*, AIR 1983 SC 558. Photographs, which were produced in court, copies of which were not supplied to the opposite party were held to form an integral part of the election petition and not merely a piece of evidence, where allegations were based on photograph. Failure to supply copies of photograph was held to be amounting to violation of Section 81(3) of the Act...."

With regard to improper reception or rejection of votes or reception of votes which were void, the learned Judge has held as follows : (para 63)

"63. Necessity of giving such facts, which are material facts, such as number of ballot papers, the precise objection with regard to each of such ballot paper has been to be a part of statement of material fact, in the absence of which, any averment of the acceptance or reception of votes or reception of vote to be void will not give rise to a triable cause of action."

49. In *Subhash Desai v. Sharad J. Rao*, reported in AIR 1994 Supreme Court 2277, while dealing with the scope of Section 83 of the Act, Their Lordships have held as follows : (para 11)

"11. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth properly in the election petition, the person whose election is challenged is bound to be prejudiced in defending himself of the charges, which have been levelled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegations, without taking the responsibility about the correctness thereof... Before the Court proceeds to investigate such allegations, the Court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the Court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83 have been furnished in the election petition, the election petition can be dismissed, not under Section 86, but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not disclose a cause of action."

50. In the case of *Iqbal Singh v. Avtar Singh*, reported in 1994 Supp(2) Supreme Court Cases 746, it has been held that Law is well settled that the proceedings in election matter are not proceedings which are decided on assumption and suspicion, however strong, cannot take the place of proof.

51. In the case of *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe*, reported in AIR 1995 Supreme Court 2284, the Supreme Court has held that Section 83 of the Act has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice so as to present a full picture of the cause of action. As regards the provisions of Sections 123 (6) and 77 of the Act, the Supreme Court has held that : (para 21)

“...From a plain reading of Sections 123(6) and 77 including Explanation 1 to Section 77 of the Act, it is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. . .”

52. In *Ramakant Mayekar v. Celine D'Silva*, reported in (1996) 1 Supreme Court Cases 399, in regard to non-supply of photographs, the Supreme Court has held thus : (para 21)

“21. If the mere mention of photographs without indicating their contents in the election petition is to be construed as incorporation of their contents by reference in the election petition, then non-supply of the copy of the photographs with the copy of the election petition would result in non-compliance of Section 81(3). However, since the photographs were not annexed to the election petition, it is a case not of non-compliance of Section 81(3) but a case of total absence of any pleading in the election petition of the corrupt practice on the basis of wall paintings. Therefore, the pleading being wholly deficient in material facts necessary to constitute the cause of action, it was insufficient to raise a triable issue on that basis. In fact, this part of the pleading was liable to be struck out since it was irrelevant at the trial for the reason stated. It is clear that any evidence adduced later, in the absence of the requisite pleading of this corrupt practice was irrelevant and inadmissible and should not have been recorded and having been recorded must be excluded from consideration....”

With regard to issue relating to the corrupt practice based on the video cassettes, the Supreme Court in para 30 has held as follows :

“30. This state of pleading relating even to the video cassettes, when the video cassettes or its transcript were not produced along with the election petition or its copy furnished with the copy of the election petition to the appellant, is a serious defect in the pleading which once again has been totally overlooked at the trial of this election petition. This again has resulted in raising an issue for which the requisite pleadings were not there and then admitting considerable evidence which is irrelevant and inadmissible.....”

53. In *Manohar Joshi v. N.B. Patil* (AIR 1996 Supreme Court 796), with regard to non-supply of copy of the document with a copy of the election petition to the respondent, the

Supreme Court has held thus : (para 23)

“23. The distinction brought out in the above decisions is, that in a case where the document is incorporated by reference in the election petition without reproducing its contents in the body of the election petition, it forms as an integral part of the petition and if a copy of that document is not furnished to the respondent with a copy of the election petition, the defect is fatal attracting dismissal of the election petition under Section 86(1) of the R.P. Act. On the other hand, when the contents of the document are fully incorporated in the body of the election petition and the document also is filed with the election petition, not furnishing a copy of the document with a copy of the election petition in which the contents of the document are already incorporated, does not amount to non-compliance of Section 81(3) to attract Section 86(1) of the R.P. Act.....”

54. In *Shipra v. Shanti Lal Khotwal* reported in (AIR 1996 Supreme Court 1691), it has been held that copy of affidavit supplied to the respondent without attestation by prescribed authority cannot be considered as ‘true copy’ of election petition.

55. In the case of *Anil R. Deshmukh v. Onkar N. Wagh*, reported in (1999 AIR SCW 338), the Supreme Court has held as follows : (para 17)

“17. We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance of the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act. . . .”

56. In *T.M. Jacob v. C. Poulouse* (AIR 1999 Supreme Court 1359), the Constitution Bench of the Supreme Court has held as follows : (para 45)

“45. In our opinion it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in

Murarka Radhey Shyam's case (AIR 1964 SC 1545) (supra) are sound tests and are now well settled. We agree with the same and need not repeat those tests . . .”

57. In *Mahendra Pal v. Ram Dass Malanger* (1999 AIR SCW 4130), the Supreme Court has held as follows : (para 7)

“7. Failure to plead even a single *material fact* leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. In the case of a petition suffering from deficiency of *material particulars* the Court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with permission of the Court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation.”

58. In *Jeet Mohinder Singh v. Harminder Singh Jassi* (1999 AIR SCW 4361). Their Lordships have held as follows : (para 46)

“46. ... Here itself, we may observe that material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of averments made in the election petition cannot be tried and cannot be made subject matter of issues framed by the Court....”

59. In *Mahant Ram Prakash Dass v. Ramesh Chandra* (1999 AIR SCW 4784), in the absence of any specific averment or complaint against the Returning Officer or his staff and in the absence of any specific irregularity in the election petition, the Supreme Court has come to the conclusion that those allegations are hopelessly vague.

60. In the case of *V. Narayanaswamy v. C.P. Thirunavukkarasu* (2000 AIR SCW 225), it has been held as follows : (para 24)

“24. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters....”

61. In *M. Karunanidhi v. H.V. Handa* (AIR 1983 Supreme Court 558), with regard to failure to enclose photograph as averred in the petition, the Supreme Court has held thus: (paras 41 and 42)

“41. It is obvious that the photograph was a part of the averment contained in paragraph 18(b). In the absence of the photograph the averment contained in paragraph 18(b) would be incomplete. The photograph referred to in paragraph 18(b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-section(3) of Section 81 of the Act by failure to serve the appellant with a copy of the election petition. In *Ch. Subbarao's case* (AIR 1964 SC 1027), the Court held that if there is a total and complete non-compliance with the provisions of sub-section(3) of Section 81, the election petition could not be treated an “election petition presented in accordance with the provisions of this part” within the meaning of Section 80 of the Act. Merely alleging that the appellant had put up fancy banners would be of no avail unless there was a description of the banner itself together with the slogan.

42. The conclusion is irresistible that the words “copies thereof” in sub-section (3) of Section 81 read in the context of sub-section (2) of Sec. 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in paragraph 18(b) could not be treated to be integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-section (3) of Section 81 of the Act.”

62. In *Ravinder Singh v. Janmeja Singh* [(2000), 8 Supreme Court Cases 191] the following conclusion of Their Lordships is relevant : (paras 10 and 11)

“10. Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123(1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form—Form 25 of the Conduct of Elections Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been

mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not a only concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial—the defect being of a fatal nature.”

63. It is also my duty to refer the decisions referred to by Mr. S. Thanga Sivan, learned counsel appearing for the election petitioner. He very much relied on a decision in *Murarka Radhey Shyam v. Roop Singh* (AIR 1964 Supreme Court 1545), wherein Their Lordships have held thus : (para 8)

“8. It seems clear to us that reading the relevant sections in part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by cl. (c) of sub-section (1) of Section 83 is fatal to the maintainability of the petition.”

With regard to objection in respect of the affidavit accompanied the petition in support of corrupt practices, the Supreme Court in paragraph 13 referred to the view of the Election Tribunal in the following manner :

“13. The verification of the affidavit of the petitioner is apparently not in the prescribed form but reading as a whole the verification carries the same sense as intended by the words mentioned in the prescribed form. The mistake of the Oaths Commissioner in verifying the affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily, as the provisions of Section 83 are not necessarily to be complied with in order to make a petition valid and such affidavit can be allowed to be filed at a later stage also.”

After referring to the conclusion of the Election

Tribunal the Supreme Court has approved the same and held that :

“This view of the Election Tribunal was affirmed by the High Court. We agree with the view expressed by the Election Tribunal and we do not think that the defect in the verification due to inexperience of the Oaths Commissioner is such a fatal defect as to require the dismissal of the election petition.”

Regarding the defect as to the time and place of verification, the Supreme Court has held that it is not a fatal defect. It further held that it is a matter which comes within clause (c) of sub-section (1) of Section 83 and that the defect can be remedied in accordance with the principles of the Code of Civil Procedure relating to the verification of pleadings.

64. In *H.D. Revanna v. G. Puttaswamy Gowda* [(1999) 2 Supreme Court Cases 217], the Supreme Court has held thus : (para 14)

“14. Section 86 provides for dismissal of an election petition in limine for non-compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with though in the High Court, a contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section 81 were not complied with. Sections 82 and 117 are not relevant in this case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 C.P.C. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.”

Mr. S. Thanga Sivan has very much relied on the following observations of Their Lordships in para 23 which read thus :

“23. This Court has repeatedly pointed out the distinction between “material facts” and “particulars”. Insofar as “material facts” are concerned, this Court has held that they should be fully set out in the election petition and if any fact is not set out, the petitioner cannot be permitted to adduce the evidence relating thereto later, nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an election petition. As regards particulars, the consistent view expressed by this Court is that the petition cannot be dismissed in limine for want of particulars and if the court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in *Bahwan Singh*

v. *Lakshmi Narain* [AIR 1960 SC 770 : (1960) 3 SCR 91] held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the tribunal was of the view that particulars has not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out."

The following conclusion in para 27 is also relevant :

"27. The test in all cases of preliminary objection is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in the affirmative, the maintainability of the petition has to be upheld. . . ."

65. In *T.M. Jacob v. C. Poulse* [(1999) 4 Supreme Court Cases 274], after referring to the object of serving a 'true copy' of an election petition and the affidavit on the respondent, the meaning of the expression 'copy' in Section 81(3) of the Act and after verifying the served copies of the returned candidate, Their Lordships have held that : (para 37)

"37. . . . It is not denied that the copies of the election petition and the affidavit served on the appellant bore the signatures of Respondent 1 on every page and the original affidavit filed in support of the election petition had been properly signed, verified and affirmed by the election petitioner and attested by the Notary. There has, thus, been a *substantial compliance* with the requirements of Section 81(3) read with the proviso to Section 83(1)(c) of the Act. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from non-compliance with Section 83 of the Act."

66. In *Anil R. Deshmukh v. Onkar N. Wagh* [(1999) 2 Supreme Court Cases 205], Their Lordships have held as follows : (para 17)

"17. . . . We have already referred to the fact that even before arguments were heard on the preliminary objection by the High Court in this case, the true copies of the affidavits had been served on the first respondent and his counsel. In the facts and circumstances of this case, we have no doubt that there was sufficient compliance with the provisions of Section 81(3) read with Section 83(1)(c) of the Act even if it could be said that the copies served in the first instance, on the first

respondent were not in conformity with the provisions of the Act. . . ."

67. In *Mahendra Pal v. Ram Dass Malanger* [(2000) 1 Supreme Court Cases 261], the learned counsel for the election petitioner has very much relied on the following observation of Their Lordships : (para 7)

"7. . . . Whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge levelled and the facts and circumstances of each case. The distinction between "material facts" and "particulars" has been explained by this Court in a large number of cases and we need not refer to all those decided cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. . . ."

68. In the light of the pleadings of the election petitioner and returned candidate, statutory provisions and various judicial pronouncements, now I shall consider whether the election petitioner has complied with the mandatory requirements of the Representation of the People Act, 1951. Before considering the contents of the election petition, affidavit, verification annexures are in accordance with the provisions contained in the Act and the Rules made thereunder. There is no dispute that the election petition has been filed within the statutory period of limitation as prescribed in sub-section (1) of Section 81. Though the election petitioner has raised several grounds in terms of Section 100 of the Act, I shall consider whether they come under the scope of "triable issues" or not ? at a later point of time. As per Sub-section (3) of Section 81 of the Act, the election petitioner has filed as many copies of the petition as there are respondents mentioned in the petition. He has attested those copies under his own signature certifying that those copies are true copy of the petition. Though learned counsel for the returned candidate has contended that the returned candidate was served only with zerox copy of the petition and the same has not been signed and attested by the election petitioner, a perusal of the material papers shows that the returned candidate and other respondents were duly served with copies of the election petition authenticated by the petitioner himself. In the counter affidavit filed by the election petitioner in O.A. No. 1190 of 2000, particularly in para 10, it is specifically stated that he had furnished required number of copies of the election petition as contemplated in Section 81(3) of the Act and he had attested each and every copy with his own signature as true copy, in compliance with Section 81(3) of the Act. It is also stated that he had filed necessary affidavit in the prescribed form in compliance of Section 83(1)(c) and Section 83(2) of the Act. Along with the election petition, the election petitioner has filed an affidavit wherein it is stated

that

"the averments regarding incurring of election expenditure by the 1st respondent in excess of the prescribed limit under Section 77(3) and other corrupt and mal-practices detailed in paragraphs 7 to 26 of the election petition filed by me are true to my knowledge and belief."

Again it is stated that,

"I further state that the averments regarding the mal-practices and corrupt practices committed by the 1st respondent detailed in paragraphs 7 to 26 of the election petition filed by me are true to my knowledge and the informations received from my election agents."

As per Section 83(1)(c) of the Act, an election petition must be signed by the petitioner and it is also required to be verified in the manner indicated in the Code of Civil Procedure for verification of pleadings. It is the contention of the returned candidate that the verification mentioned in the election petition referred to above is not in accordance with the said provision, hence the same is liable to be rejected. As rightly contended, the said verification does not specify as to which of the paragraph or paragraphs or which part of the said paragraphs are verified by the election petitioner from his knowledge and which of the said paragraphs or part of the paragraphs are verified from the information received. The election petitioner has also not specified or verified as to the source from which information was received. However, the Courts have taken a view that, if there is defect in the verification, on that ground the election petition cannot be dismissed in limine. I have already observed that the election petitioner has duly signed and verified in the same manner as in the petition. To this extent, he has complied with the mandatory requirement. However, though the election petitioner has raised certain important allegations with regard to taking photographs, tampering of lock wherein the ballot boxes had been stored and video cassettes said to have been taken when Chief Minister Mr. M. Karunanidhi and Mayor of Chennai City Mr. Stalin addressed public meetings in the Vellore constituency, admittedly, the copies of photographs and video cassettes have not been sent along with the notice to the returned candidate. As observed by Their Lordships of the Supreme Court in 1991 (2) S.C.C. 342 (cited supra), it is a precondition for the trial of the charges of the corrupt practices that the person called upon to face the charge should be apprised, in advance, of the precise charge or charges against him and also the precise evidence—oral and documentary, which is sought to be relied upon in support of the said charge or each of the said charges. In the absence of supply of copies of photographs and video cassettes, I am of the view that the election petitioner has not complied with the mandatory provisions of the Act. I have already referred to the decision of the Supreme Court in (1996) 1 S.C.C. 399 (cited supra) regarding non-compliance of Section 81(3), particularly non-supply of copy of the photographs with the copy of the election petition. Since the photographs were not

annexed to the election petition, it is the case of non-compliance of Section 81(3). Any evidence adduced later in the absence of requisite pleading of the corrupt practice as well as compliance of mandatory provision is irrelevant and inadmissible. As observed by Their Lordships in para 30 of the above decision, when the video cassettes or its transcript were not produced along with the election petition or its copy furnished with the copy of the election petition to the returned candidate, is a serious defect in the pleading. As observed in AIR 1996 Supreme Court 796 (cited supra), in a case where the document is incorporated by reference in the election petition without reproducing its contents in the body of the election petition, it forms an integral part of the petition and if a copy of that document is not furnished to the returned candidate with a copy of the election petition, the defect is fatal attracting dismissal of the election petition under Section 86(1) of the Act. As observed by me already, the election petitioner has not furnished copy of those documents along with the election petition to the returned candidate. In view of the averments in paras 7, 10 and 16 relating to photographs and video cassettes, the said paragraphs would be treated as incomplete. In such a circumstance, as observed in 1983 S.C. 558 (cited supra), the videos and photographs referred to in paras 7, 10 and 16 were therefore, integral parts of the election petition. It follows that there was total non-compliance with the requirements of sub-section (3) of Section 81 of the Act by failure to serve the copies of those documents on the returned candidate with a copy of the election petition. As observed in AIR 1964 Supreme Court 1027 (cited supra), if there is a total and complete non-compliance with the provisions of Section 81(3), the election petition could not be treated as "election petition" presented in accordance with the provisions of Part VI within the meaning of Section 80 of the Act. Further, the words "copies thereof" in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. In the light of the averments in the election petition, I hold that the photographs and video cassettes adverted to in paragraphs 7, 10 and 16 could be treated as integral part of the election petition and, therefore, failure to supply copy of the photographs and video cassettes to the returned candidate amounts to violation of the provisions of sub-section (3) of Section 81 of the Act.

69. As far as defect in verification as pointed out by the Supreme Court in AIR 1964 S.C. 1545, the defect can be removed in accordance with the principles of the Code of Civil Procedure, 1908.

70. In so far as the expression "copy" in Section 81 (3) of the Act, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. A copy of which differs in material particulars from the original cannot be treated as a true copy

of the original within the meaning of Section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation. I have already observed that though learned counsel appearing for the returned candidate has contended that he was served with only xerox copy, the same has not been substantiated by placing the same before this Court. On the other hand, verification from the Registry shows that only true copy duly authenticated by the election petitioner alone has been served on the returned candidate and other respondents.

71. In the light of the above discussion, I hold that though there is defect in the "verification", the same can be rectified in terms of the provisions of the Code of Civil Procedure. The "copy" served on the returned candidate is a true copy duly authenticated by the election petitioner. However, the affidavit filed by the election petitioner does not satisfy the requirement. I also hold that the election petitioner though made an allegation against the returned candidate by relying on photographs and video cassettes, the same have not been enclosed along with the election petition and served on the returned candidate.

72. Now I shall consider whether the election petition satisfies Section 83 of the Act. Even at the outset, Mr. S. Thanga Sivan, learned counsel appearing for the election petitioner by drawing my attention to Section 86 of the Act, would contend that it is open to this Court to dismiss an election petition, which does not satisfy the provisions of Section 81 or Section 82 or Section 117 of the Act and for non-compliance of Section 83, the election petition cannot be dismissed. On the other hand, Mr. R. Thiagarajan, learned senior counsel appearing for the returned candidate, would contend that though Section 83 has not been included in Section 86, the Supreme Court more than in one case has held that compliance of Section 83 is a mandatory. As per sub-section (1) of Section 83, concise statement of material facts on which the petitioner relies on has to be mentioned in the election petition. If the petitioner alleges corrupt practice, it is for him to furnish full particulars of such corrupt practice including full statement regarding names of the parties alleged to have committed such corrupt practice, the date and place of commission of each of such practice. Proviso to sub-clause (c) shows that if the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in terms of Form 25 in support of the allegation regarding corrupt practice. In this back-ground first I shall refer the decisions to show that Section 83 is a mandatory one and the material facts and particulars set out in the election petition.

73. I have already extracted Section 83 of the Act. Though the learned counsel appearing for the election petitioner by referring Section 86 would state that Section 83 is not a mandatory provision, the judicial decisions are otherwise. In the following decisions, the Supreme Court has held that compliance of Section 83 is a mandatory :—

- (1) AIR 1969 S.C. 734 (para 5) (cited supra)
- (2) AIR 1969 S.C. 1201 (para 29) (cited supra)

- (3) AIR 1972 S.C. 515 (para 19) (cited supra)
- (4) AIR 1986 S.C. 1253 (para 11) (cited supra)
- (5) AIR 1987 S.C. 1577 (para 14) (cited supra)
- (6) 1991-2-S.C.C. 342 (para 9) (cited supra)
- (7) AIR 1991 Kerala 20 (para 2) (cited supra)
- (8) AIR 1995 S.C. 2284 (para 17) (cited supra)
- (9) 2000 (8) S.C.C. 191 (para 10 and 11) (cited supra)

It is clear that in the light of the above pronouncements, the election petition must not only contain concise statement of material facts, but also set forth full particulars of corrupt practice. If the election petitioner alleges corrupt practice, he has to furnish full statement that is names of the parties alleged to have committed corrupt practice, the date and place of commission of each corrupt practice. I have already referred to the decision of the Supreme Court in *George Fernandez's* case (1969 SC 1201) wherein Their Lordships explained the difference between material facts and particulars. It is clear that the word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The material facts will mention that a statement of fact was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. It is also explained in the said decision that if the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. In the election petition regarding 'bribery', the election petitioner has generally stated that returned candidate and his agents virtually pumped in several crores of rupees and indulged in purchase of votes from various villages by paying illegal gratification to the voters. Likewise, it is alleged that the returned candidate and his agents resorted to paying huge amounts of money and made various gifts like brass vessels, saris, dhoties etc., to various sections of people in many villages as illegal gratification and transported them to polling booths and induced as well as compelled them to cast their votes in his favour. By alleging so, it is stated that the action of the returned candidate amounts to corrupt practice as per Section 123 of the Representation of the People Act. As stated by Their Lordships in *George Fernandez's* case, nothing material has been stated in the petition and in such a circumstance, he cannot be permitted to amplify at a later date by giving particulars of acts on the part of the elected candidate or his agents. In a large number of cases it has been laid down that the material facts, must make out a charge and it is only then that an amendment to

amplify the charge can be allowed or new instances of commission of corrupt practice charged can be given. It is settled law that if no charge is made out in the petition at all the addition of particulars cannot be allowed to include indirectly a new charge. Merely repeating the words of the statute is not sufficient and the section requires that material facts of corrupt practices must be stated. Likewise, though it is generally stated that the returned candidate and his agents used more than 100 vehicles every day for electioneering and on the date of election on 11-9-99 more than 2000 vehicles, hired by the returned candidate and his agents from various parts of the State of Tamil Nadu as well as the adjoining State of Andhra Pradesh were illegally used for transporting the voters to the polling booths admittedly, the election petitioner has not furnished the registration number of the vehicles and the details regarding persons, places, polling booths etc. Under Section 123 (5) of the Act, hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or the use of such vehicle or vessel for the free conveyance of any elector to or from any polling station is prohibited. A reading of the above section makes it clear that use of vehicle for the "free conveyance" of the elector alone would constitute corrupt practice. No single specific instance has been quoted by the election petitioner in para 7 of the election petition. As stated earlier, first of all the registration number of the vehicles has not been mentioned even in one case and also not specified as to who were all the electors given conveyance to or from any polling station. In other words, the allegations referred to therein are too vague and general and with these insufficient particulars the returned candidate may not be in a position to defend the same effectively.

74. The perusal of the election petition also discloses that no contemporaneous document relating to various acts has neither been disclosed nor produced and in the absence of any such document, as rightly contended, no notice of such act can be taken note of. I have already referred to Rule 94-A of the Conduct of Election Rules, 1961 which requires that an affidavit must be in Form 25. Form 25 makes it clear that the election petitioner must specify the nature of the corrupt practice and the details of the corrupt practice as alleged. These provisions have not been complied with by the election petitioner. I have already referred to various decisions to show that for want of necessary supporting affidavit filed by the election petitioner, the allegations of corrupt practices are liable to be struck off. Though the election petitioner has filed an affidavit, as stated earlier, it does not contain the nature and details of the corrupt practice.

75. With regard to the allegation, namely, widespread rigging and bogus voting, admittedly, the election petitioner has not filed any contemporaneous document such as making complaint to election or police officers.

76. In para 9, the election petitioner has alleged that the returned candidate was supported by the ruling party in

the Centre as well as in the State and on that strength the entire government machinery including Government cars and other vehicles were used by the returned candidate for electioneering. Here again, the election petitioner has not mentioned the details regarding use of Government machinery including Government cars and other vehicles, namely, the registration numbers etc. Though it is alleged in the same paragraph that the petitioner and his agents had complained to the 8th respondent and to the police authorities, admittedly the election petitioner has not enclosed copy of those petitions. Thus, it is clear that the allegations are general in nature and they do not disclose any corrupt practice in terms of Section 83 of the Act.

77. In paragraph 10, the election petitioner has stated that 8th and 9th respondents officials videographed the public meeting arranged by the returned candidate and his agents which was attended by Mr. M. Karunanidhi, Chief Minister of Tamil Nadu in Vellore for canvassing votes for the returned candidate. According to him, for the said programme alone more than Rs. 20 lakhs was spent by the returned candidate and the said incident alone would prove that he has spent huge amounts of money and exceeded the expenditure limit allowed by the Election Commission. Further, according to him, Mayor of Chennai City Mr. M.K. Stalin was also brought to the neighbouring areas by the returned candidate and for arranging his public meetings several lakhs of rupees was spent by him (the returned candidate). After making such allegations, it is stated that the 8th respondent himself as well as the observer of the Election Commission have issued a memo to the returned candidate about the impropriety of the accounts submitted by him. With reference to these averments, the returned candidate in para 24 has stated that he has not arranged the said meetings. Here again, the election petitioner has not furnished the particulars, namely, the name of the place, time and other material facts. The perusal of the said paragraph would show that only general and sweeping allegations have been made to make it appear that the returned candidate has exceeded the expenditure limit alone. In this regard, it is useful to mention what is referred to in Section 123 (6) of the Act for the words "corrupt practices" is the incurring or authorizing of expenditure in contravention of Section 77 that is incurring of expenditure by the candidate himself and through somebody authorised by him for such purposes exceeding the prescribed limit. It is clear that Section 123 (6) does not take within its fold the failure to maintain true and correct account. In other words, the corrupt practice defined therein relates only to incurring or authorizing of expenditure in excess of the amount prescribed; accordingly failure on the part of the returned candidate to maintain accounts as required under Section 77(1) and (2) will not actually affect the result of the election. Section 77 of the Act provides that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date on which he has been nominated and the date of

declaration of the result thereof, both dates inclusive. Explanation 1 which was introduced by Amendment Act 58 of 1974, declares that any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of Sub-section (1) of Section 77. Sub-section (2) of Section 77 provides that the account of the election expenses shall contain such particulars, as may be prescribed. Sub-Section (3) provides that the total of the said expenditure shall not exceed such amount as may be prescribed. As per Section 78 of the Act the account of election expenses is required to be lodged with District Election Officer by every candidate at an election within 30 days from the date of election of the returned candidate. The maximum amount of election expenditure which may be incurred by the candidates for the Parliamentary and Assembly constituencies has been prescribed in Rule 90 of the conduct of Election Rules, 1961. Under Section 123 (6) of the Act, the incurring or authorising of expenditure in contravention of Section 77 of the Act amounts to commission of a corrupt practice. These provisions have been considered by the Supreme Court in AIR 1995 S.C. 2284 (cited supra) and the following conclusion of Their Lordships in para 21 is relevant :—

"21 However, every contravention of Section 77 of the Act does not fall within the mischief of Section 123(6) of the Act. Neither the violation of Sub-section (1) of Section 77 nor the violation of Sub-section (2) of Section 77 amounts to the commission of the corrupt practice under Section 123 (6) of the Act. However, Section 77(3) mandates that the total of the expenditure in connection with the election shall *not* exceed the prescribed limit and therefore the provisions of Section 123 (6) of the Act are related *only* to Section 77(3) of the Act. If a candidate incurs or authorises expenditure in excess of the prescribed limits, he commits the corrupt practice under Section 123 (6) of the Act and his election is liable to be set aside and he also incurs the disqualification of being debarred from contesting the next election. From a plain reading of Sections 123 (6) and 77 including Explanation 1 to Section 77 of the Act, it is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. An expenditure incurred by a third person, which is not authorised by the candidate or his election agent is not a corrupt practice"

In the light of the legal position and in the absence of any details whether the said expenditure has been incurred by the returned candidate or his agent or any other person, the petitioner has not made out *prima facie* case for corrupt

practice. Those allegations in para 10 suffers from for want of material facts and particulars and, as rightly contended, only general allegations have been made to make it appear as if the returned candidate had exceeded the expenditure limit allowed. Further, though it is stated that the said meetings were covered by video and audio, as held in AIR 1983 S.C. 558 (cited supra), in the absence of photograph or videograph, the averment contained in paragraph 10 would be incomplete. Inasmuch as the photograph or videograph referred to in that paragraph was an integral part of an election petition, then there was total non-compliance with the requirements of Sub-section (3) of Section 81 of the Act by failure to serve the elected candidate with a copy of the election petition. In AIR 1964 S.C. 1027 (cited supra), the Supreme Court has held that if there is a total and complete non-compliance of Sub-section (3) of Section 81, the election petition could not be treated as an election petition presented in accordance with the provisions of Part VI within the meaning of Section 80 of the Act.

78. In para 11, it is stated that the returned candidate's name does not find a place in the voters list of Vellore and he has furnished an address in a remote village called Melarasampatti to be his place of residence and those particulars have been submitted by him with the 8th respondent. He also exercised his franchise in Melarasampatti village. This, according to the election petitioner, is in gross violation of the rules and regulations and for the above act, he is liable to be disqualified. With reference to this, the returned candidate has offered his explanation in para 25 of his affidavit. According to him, he belongs to Vellore Constituency and he was registered as a voter in Melarasampatti village; hence his name was properly filed and validly accepted. He has correctly exercised his franchise. The explanation of the elected candidate is acceptable and it does not show any violation of rules and regulations. At the most, it is only a vague and sweeping averment without material facts. Likewise, as rightly stated, the allegation as to Mr. Ponnuswamy, who has contested from Chidambaram reserved Constituency, has nothing to do with the case of the present election petitioner, nor does it advance the case of the present election petition.

79. The malpractice of tampering with ballot boxes alleged in paragraph 12 are vague and without any material facts and particulars as required in law.

80. In para 13, the election petitioner has stated that the entire ballot boxes pertaining to Vellore Parliamentary constituency were brought to the Thanthai Periyar Polytechnic building in Vellore Town and while transporting the ballot boxes from various places, the 8th respondent's officials did not permit the election petitioner or his agents to accompany the ballot boxes and hence the election petitioner was denied of the opportunity to ensure that there is no malpractice en route. It is also averred that while opening the safety rooms, the 8th respondent did not permit the election petitioner's agent to be present. In this paragraph, the election petitioner

has made allegations only against 8th respondent i.e., the Returning Officer and District Collector of Vellore. Even otherwise the election petitioner has not furnished the particulars such as date, time and persons present.

81. In para 14, it is stated that the election petitioner has appointed 3 persons, viz., Mr. G. Hussain of Variyur, Vellore District, Mr. T.N. Kuppen of Thoraipadi and Mr. G. Sivaprakasam, Kamaraj Nagar, Thoraipadi as his agents to stay in the Thanthai Periyar Polytechnic on shift basis to keep a watch on the rooms. It is further stated that on 3rd October, 1999 at about 6.30 P.M., one of his agents namely Mr. G. Hussain after sensing some hasty movement of the returned candidate and his men, inside the premises, he had enquired with the security personnel and realised that the returned candidate and his men had indulged in a grave malpractice of changing the ballot boxes by illegally opening the locked door by unscrewing the screws available in the padlock of the safety room with the help of the 8th respondent's subordinates and the police personnel posted there. This has been stoutly denied by the returned candidate in para 28 of his affidavit. Here again, the election petitioner has not furnished any material facts and particulars and how the election petitioner and his agent had realised that and no contemporaneous documents such as complaints to the election and police officer made with regard to the said incident have been placed before this Court.

82. In para 15, it is stated that the election petitioner rushed to the premises where the ballot boxes were kept at about 6.50 P.M. with his chief agent Mr. Era. Sa. Maran and one Gnanamani, a press photographer of Malai Murasu daily. It is further stated that the padlock on the door of the safety room in which the ballot boxes pertaining to Anikut assembly segment was kept has been removed and refixed. After noticing the useless safety system, he realised that the 8th respondent and his subordinates had acted under pressure from the returned candidate. The said allegation has been denied by the returned candidate stating that they are all nothing but imagination of the election petitioner. The perusal of the said paragraph shows that there is no allegation as to any actual removal of either the screws or the padlock nor is there any allegation as to whether anybody saw the same being removed by anybody. Though sweeping allegations have been made against the returned candidate, no contemporaneous act in support of the above allegations have been disclosed in the said paragraph. Further, the election petitioner has filed Malai Murasu Newspaper (Evening edition) dated 4-10-99 as document No. 8, the perusal of the same shows that it did not contain any allegation against the returned candidate or the 8th respondent. But it merely shows that election petitioner visited Thanthai Periyar Government Polytechnic college around 6.50 P.M. and verified whether there is a seal in the lock and left the premises. There is no averment that after seeing the "useless safety system", he had made any complaint to the concerned authority. In such a circumstance, it is right in contending that no contemporaneous act in support of his allegations have been disclosed in this paragraph. In para 16,

it is stated that election petitioner made the padlock photographed by Mr. Gnanamani, the press photographer of Malai Murasu, Vellore and further a complaint was also lodged by him to the subordinates of the 8th respondent. In this paragraph also, there is no allegation against the returned candidate or his men. Likewise, though it is stated that election petitioner had made a complaint to the subordinates of the 8th respondent and the police personnel, admittedly, no contemporaneous document substantiating such incident has been filed along with the petition. In paragraph 17, it is stated that though the press photographer of Malai Murasu had taken a photo showing the nature of the padlock, he refused to give copies of the same under the influence of the 8th respondent and the returned candidate. The said averment has been denied by the elected candidate. Even otherwise his grievance is only against the press photographer of Malai Murasu for not giving copies of the photographs said to have been taken by him regarding the condition of the padlock. In Sub-paragraph(a) of paragraph 17 it is stated by the election petitioner that the total number of electors available in the Vellore constituency is 11,52,421, that the total number of votes polled on the date of polling, viz., 11th September, 1999 is 7,00,114 according to the official statement issued by respondents 8 to 10 on the next day of the polling, and that the polled votes works out to about 60.92 per cent votes in the Vellore constituency. However, it is stated that the total number of votes found available after the counting is 7,02,639 and there was a difference of 2,525 votes, which is only due to the malpractice committed by the elected candidate and his agents. This allegation has been specifically denied by the returned candidate. Even though it is stated that the difference of 2,525 votes is due to the malpractice committed by the elected candidate and his agents, the election petitioner has not furnished particulars. The details of votes polled and counted as declared by respondents 8 to 10 as seen from their communication dated 30-10-99 are the total electors = 11,52,421; votes polled = 7,02,639; valid votes = 6,89,375; invalid votes = 13,264; returned candidate (Mr. N.T. Shanmugam—P.M.K. Party) secured 3,24,547 votes (47.08 per cent) and the election petitioner (Mr. Mohammed Asif—A.I.A.D.M.K. party) secured 2,98,862 votes (43.35 per cent). The said information further discloses that Mr. N.T. Shanmugam of P.M.K. has been elected and Mr. Mohammed Asif of A.D.M.K. has been defeated by a margin of 25,685 votes. In the light of the above particulars and in the light of absence of details regarding malpractice said to have been committed by the returned candidate and his agents, those allegations are liable to be rejected as devoid of merits. In sub-paragraph (b) of paragraph 17, it is stated that due to long gap of 25 days unnecessarily provided by respondents 9 and 10 for counting votes after the date of polling, there was a widespread tampering of ballot boxes by the returned candidate and his agents. Here again, with regard to allegation of tampering of ballot boxes, the election petitioner has not furnished details such as place, date and names of persons alleged to have involved. The returned candidate cannot be

faulted with for the time taken by respondents 9 and 10 for counting votes after the date of polling. The allegation in sub-paragraph (b) is vague and general, and the particulars and the allegations made in sub-para (c) relate to 8th respondent. The allegations made in para 18 relate to 8th and 9th respondents and the first respondent—returned candidate has nothing to do with the same.

83. In para 19, it is stated that a perusal of the photograph which was specifically taken on 3-10-99 showed that there was no safety central bolt and there were only outer screws available in the padlock which have been easily removed by the returned candidate and his agents. The said allegation has been denied by the returned candidate and as discussed earlier, the election petitioner has neither enclosed the photograph said to have been taken on 3-10-99 nor furnished copies of the same to the returned candidate along with the election petition.

84. In paragraph 20, the allegations have been made against the 8th respondent. In para 21, though it is stated that the elected candidate and his agents had involved in illegal activities, except vague and general statement, the election petitioner has not furnished the required material facts and particulars.

85. The allegation in para 22 relates to 8th respondent. Here again, the election petitioner has raised vague and general averments

86. In para 23, the election petitioner himself has admitted that he did not register any written complaint before the 8th and 9th respondents, namely, the Returning Officer/The District Collector of Vellore and the Chief Electoral Officer of Tamil Nadu, Chennai-9 for the reason that such complaints would be misused by the returned candidate and the 8th respondent. When the election petitioner himself has admitted that he did not register any written complaint before the Appropriate Authorities at all stages, it is clear that except the general and vague statements the election petitioner has not substantiated by filing contemporaneous documents. The averment made in para 24 relates to respondents 8 and 9. In para 25, the petitioner has stated that the returned candidate and his agents were indulged in large scale corrupt practice by changing the ballot boxes and bags by opening the room in which the ballot boxes of Anicut constituency were kept and replaced the genuine ballot bags and boxes with bogus ones with the active help of the 8th respondent and his subordinate officials. The said allegations have been stoutly denied by the returned candidate. In the light of his own admission that he had not made any complaint to 8th and 9th respondents, namely, the Competent Authorities and in the absence of material facts and particulars, those averments cannot be accepted.

87. In the last paragraph (para 26) it is stated that the 8th respondent and his officials rejected thousands of votes both in favour of the election petitioner as invalid and reckoned thousands of actual invalid votes in favour of the returned candidate. The said allegations have been denied by

the returned candidate. I have already referred to the details of votes polled and counted as declared by respondents 8 and 10. Further, in the latter part of paragraph 26 the election petitioner has made allegations against third respondent who has nothing to do with the present controversy. The elected candidate has stated that the election petitioner has not furnished any details, material facts or particulars and further, before declaring results, the procedure has been clearly followed and observed.

88. To sum up in order to declare the election of the returned candidate as null and void under Section 100 of the Act, it is absolutely necessary for the election petitioner to plead that the result of the election has been materially affected by non-compliance with the provisions of the Acts and Rules. I have already referred to the relevant provisions of the Act, various averments raised by the election petitioner and the affidavit of the returned candidate as well as judicial decisions dealing with the mandatory requirements. The election petition lacks necessary material facts and particulars in all aspects. In the absence of concise statement of material facts and particulars and full particulars regarding corrupt practices, it is not open to the election petitioner to adduce any evidence to that effect. I have already demonstrated Section 83 of the Act is a mandatory provision and all material facts and particulars should find place in the election petition by way of pleadings. If the required facts are not pleaded with necessary material facts and particulars, the election petition is liable to be dismissed. If the pleadings are insufficient and no triable issues existed this court has power to reject the election petition under Order VII, Rule 11 of the Code of Civil Procedure. It was held in catena of decisions that if the Court is satisfied that the election petition does not make any cause of action which may tend to prejudice, embarrass or delay the proceedings, the Court can strike out the pleadings. I have already referred to that Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83 (1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial since the defect being of a fatal nature. Regarding corrupt practice, no name of any informant has been mentioned under Section 123 (1) of the Act in the affidavit. In such a circumstance, no issue could be framed for trial. Section 83 of the Act requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and

complete picture of the action to be detailed in the election petition but under the proviso to Section 83 (1) of the Act, the election petitioner levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. I am satisfied that the mandatory requirements are lacking in our case. There is no dispute that by virtue of Section 87 of the Act, the provisions of the Civil Procedure Code are made applicable for the trial of an election petition. Under Order VI Rule 16 of the Code of Civil Procedure the Court is empowered at any stage of the proceedings to strike out any pleading which may be unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit or which otherwise an abuse of the process of the Court. Order VII, Rule 11 (a) mandates that a plaint shall be rejected where it does not disclose a cause of action. Therefore, it is clear that an election petition is to be summarily rejected where it fails to furnish a cause of action. The allegations regarding bribery, undue influence, excess expenditure, malpractices, irregularities in certain booths, use of Government machineries, tampering of ballot boxes etc., the election petitioner has not furnished material facts, particulars and the general allegations do not disclose all material facts. The election petitioner has not filed contemporaneous complaint or petition against his alleged malpractice, tampering of ballot boxes etc. The allegation contained in the election petition lacks material particulars. Even for the use of Government machineries, the election petition does not specifically say the details regarding motor vehicles which were procured and used for the free conveyance of electors. The election petitioner has not furnished the registration number of motor vehicles and not specified as to who were all the electors given conveyance to or from polling station. The allegations are too vague and general and are not capable of raising a cause of action. It is obligatory on the part of the election petitioner to give requisite facts and details of each corrupt practice with clear exactitude. If the election petitioner fails to give such details and the allegations are vague and general,

there may not arise a cause of action and the trial of such election petition is unnecessary. The Supreme Court in various above referred decisions emphasised that if the allegations are vague and general and the particulars of corrupt practices are not stated in the pleading, the trial of the election petition cannot be proceeded with and the election petitioner should not be allowed to have a "fishing expedition" to have a "roving enquiry". I am satisfied that the allegations in the election petition do not give the details, and that they are of vague and general character. As all the grounds urged by the election petitioner are bereft of material particulars, the petition is only to be rejected.

89. In the circumstances, on a due consideration of all the contentions raised by the learned counsel for the election petitioner and the returned candidate, the Original Application No. 1190 to 2000 has to be allowed on the preliminary objection raised. In view of the order allowing the Original Application filed by the returned candidate, as a further consequence, this Court holds that the Election Petition No. 4 of 2000 deserves to be dismissed. Consequently, the entire Election Petition is rejected under Order VII, Rule 11 of the Code of Civil Procedure.

90. In the result, Original Application No. 1190 of 2000 is allowed and the Election Petition No. 4 of 2000 stands dismissed under Section 86 and 83 (1) of the Representation of the People Act, 1951 read with Order VII, Rule 11 of the Code of Civil Procedure, 1908. The parties to bear their respective costs in the original application as well as in the Election Petition.

Witness the Hon'ble Thiru NAGENDRA KUMAR JAIN, Chief Justice, High Court at Madras aforesaid, this the SIXTH day of FEBRUARY TWO THOUSAND AND ONE.

Sd/-

Assistant Registrar,
Original Side-II

[No. 82/TN-HP/4/2000]

By Order,
K. R. PRASAD, Secy.

